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MICHAEL ROBAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-719

**JEROME D. CHAPMAN, COMMISSIONER OF THE TEXAS
DEPARTMENT OF HUMAN RESOURCES, *et al.*,
Petitioners,**
v.

**HOUSTON WELFARE RIGHTS ORGANIZATION, *et al.*,
Respondents.**

**On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit**

SUPPLEMENTAL BRIEF OF RESPONDENTS

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PRELIMINARY STATEMENT

This supplemental brief is submitted, pursuant to Rule 41(5) of the Rules of the Supreme Court, in order to bring to the Court's attention materials pertaining to the background and purpose of 28 U.S.C. § 1343(4) that recently have been obtained by respondents from the United States Department of Justice under the Freedom of Information Act. Although respondents' FOIA request was made more than a month prior to the filing of their brief in chief, the materials discussed herein were not made available by the Department until after the brief was filed. Copies of each

of the documents discussed have been lodged with the Clerk of the Court and served upon counsel for petitioners.

ARGUMENT

Contemporaneous Memoranda Prepared by the Department of Justice Demonstrate That 28 U.S.C. § 1343(4) Was Intended to Provide Jurisdiction Over Claims Arising Under All of the Civil Rights Statutes, Including Section 1983.

28 U.S.C. § 1343(4) was originally introduced in the 84th Congress as part of a package of civil rights amendments recommended by the Eisenhower administration. The bill was passed by the House of Representatives, but no action was taken on the proposal by the Senate. The provision was reintroduced in the 85th Congress in the same form as part of H.R. 6127, which eventually became the Civil Rights Act of 1957. Pub. L. No. 85-315, 71 Stat. 634.

The proposals that became the Civil Rights Act of 1957 were all drafted within the Department of Justice. See Anderson, *Eisenhower, Brownell, and the Congress: The Tangled Origins of the Civil Rights Bill of 1956-57* (1964). As originally drafted, the Justice Department proposal contained changes in the civil rights criminal laws, 18 U.S.C. §§ 241-242, expanded 42 U.S.C. § 1983 to allow suits by private individuals whether or not the defendant had acted under color of state law, and permitted actions by the Attorney General to enforce 42 U.S.C. §§ 1983 and 1985(1)-(3). A copy of the draft bill has been lodged with the Clerk. The draft bill also amended 28 U.S.C. § 1343 by adding subsection 4 in the form that was ultimately adopted by Congress in 1957. An internal memorandum explaining the reasons and effects of this amendment states as follows:

Section 1343 of Title 28 now does confer upon the United States District Courts jurisdiction to entertain actions under the civil rights statutes in Title 42, specifically 42 U.S.C. 1985 and generally other statutes in Title 42. It is deemed desirable to add another paragraph to Section 1343 to cover *all* the civil rights statutes now in existence or hereafter added, by using very general language including "civil rights, including the right to vote." It would seem that the District Courts would have jurisdiction under these civil statutes without specific reference thereto in section 1343, but in the absence of such reference a court might find that the \$3000 or more requirement of 28 U.S.C. 1331 would apply. (Emphasis in original.)

A copy of this analysis has also been lodged with the Clerk.

Although the amendments to section 1983 were dropped from the bill before the Justice Department sent its proposals to Congress, see Anderson, *supra* at 20, the amendments to sections 1985 and 1343 remained in the bill.¹ Nothing in the Committee reports or legislative history suggests that the broad purpose originally envisioned for section 1343(4) by the Department was ever altered. Thus, even after the Senate refused to accept the proposed changes in 42 U.S.C. § 1985, the jurisdictional provision was retained in the

¹ When Attorney General Brownell transmitted the administration's civil rights proposals to Congress on April 9, 1956, he was not authorized by the White House to recommend the proposed amendments to section 1985 or section 1343. Anderson, *supra* at 39. He did, however, commend those provisions to Congress for its consideration, *Id.* , and at the request of Representative Keating, a member of the Judiciary Committee, he transmitted those proposals to the Committee without formal administration endorsement. *Id.* at 40-41.

bill. The only possible explanation for retaining section 1343(4) was that given in the original Justice Department analysis: the provision was intended to eliminate any doubts about district court jurisdiction without regard to the amount in controversy over "all the civil rights statutes now in existence or hereafter added."

Respectfully submitted,

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